

# DOH Feedback related to TAC Suggestions

## Compliance Monitoring

### **Suggestions highlighting or emphasizing important aspects of current process:**

- Retain current process of periodic progress reports after decision until the service becomes operational, followed by documentation of completed costs. (G-1 and G-5)
- Maintain communication between affected state agencies to permit cross-check between licensing, certification, registration and/or reimbursement sources which would support compliance monitoring related to the approved the scope of services. (G-3)
- Enforce penalties for non-compliance with provisions and conditions of the CON-approved application, using for example such provisions as curtailment of services, fines, or other defined penalties. (G-4)

### *Department of Health comments:*

*We concur in the use of periodic progress reports (which are required under the current rules, WAC 246-310-590). We currently strive to use data available from other federal, state and local agencies, and will continue to look for ways to use current as well as new data sources.*

*The CON statute grants the Department the authority to (1) suspend or revoke certificates of need (RCW 70.38.115(1)); (2) the authority to impose a fine of up to \$100 per day on a person who operates without a CON when one is required (RCW 70.38.125(5)); and (3) the authority to seek an injunction to prevent a violation or threatened violation of the CON law or rules (RCW 70.38.125(6)).*

*Under the current law, the Department has no authority to impose fines for non-compliance with conditions on a CON. In addition, proceeding in superior court is an expensive and time-consuming process, especially given the limited resources available to the CON program, and the contentious nature of CON litigation. The type of enforcement authority recommended by the TAC will require changes to the current statute.*

### **Suggestions based upon observations similar to those cited in JLARC report:**

- Extend the length of compliance accountability and oversight to at least five years after project completion. (G-2)
- Monitor that an applicant is providing:
  - the approved service based upon the assumptions that led to approval,
  - to the population promised,
  - at the promised level of charity care,
  - in compliance with the added conditions,

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- observing the utilization/volume standards appropriate in tertiary services (or be able to demonstrate that departure from the assumptions is reasonable and has not impacted quality outcomes), and
- attaining the “special conditions/representations” that resulted in the decision to award. (G-6)

*Department of Health comments:*

*The JLARC performance audit recommended that “. . . the Department should revise its monitoring practices to include completed projects, as appropriate, in order to ensure applicants’ compliance with issues Certificates of Need.” The Department concurred with that recommendation, and is establishing a workgroup to review and develop monitoring criteria and techniques.*

*Current law establishes that a CON is valid for two years, with one six-month extension (RCW 70.38.125) but states no clear period during which monitoring is required or expected. Adding a specific length of time, such as the five years suggested above, to the statute would clarify the monitoring period.*

*Currently, facilities and services that are not licensed do not have robust data collection and reporting systems, which poses a challenge to monitoring.*

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### Data

#### New Suggestions:

- The data for CON analysis and monitoring should be a subset of a comprehensive data system for state health planning which is a public pathway to improved data collection methodology and reporting consistent with technological advances. (H-1)
- There should be ongoing CON data collection acquired and reported by an independent state agency using consistent and reliable performance measures. (H-2)
- Data, as it relates to CON reviewable services, should include:
  - comprehensive inpatient and outpatient data,
  - financial and utilization information related to charity care, quality, and cost regardless of the service location. (H-2)
- Data should be publicly available for applicants and observers. (H-2)
- Data collected in this process may produce indications for quality improvement, performance improvement and other quality of care issues. This should be reported to state planning body and all appropriate agencies whose authority extends to this issue. (H-2)

#### *Department of Health comments:*

*The JLARC performance audit recommended that the Legislature consider establishing consistent basic reporting requirements for all services and facilities that are subject to CON review. The Department agrees that uniform and correct information about applicants and other existing facilities and services is important to fair, consistent and accurate decisions.*

*Creation of a data system of the scope and complexity suggested above, for CON and other health planning and quality improvement purposes, would be expensive, even if it were feasible under current technology and political circumstances. Our experience with the hospital data reporting system indicates that the source of financing of such a system could be quite problematic. The time, effort and funding required might well be better spent on establishing a basic system of electronic medical records for our health care providers, with CON data issues approached in another way.*

*With regard to creation of an independent state agency, it does not appear from the task force's discussion that there are any compelling reasons for creating a new, separate state agency for CON or health planning. Creation of a new agency entails additional overhead and operating costs that may well outweigh any benefits.*

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*The Department makes public access to its processes and data a priority. The data now used in connection with CON is available to the public. Collection of health and health care information of the type and scope recommended inevitably leads to privacy concerns that must be addressed.*

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### Funding

#### **New Suggestions:**

- Application fees should be established that are sufficient to cover the specific or direct costs of CON application review (not to cover the costs of the timely data system, etc.). (D-6)
- Funding sources for other related costs and systems, e.g. data system needs to be identified and provided; (D-6)

#### *Department of Health comments:*

*The CON program is funded exclusively by application fees. The number of applications varies, sometimes significantly, from year to year, creating an unpredictable funding source. The fee revenue must cover all the costs of the program, including the agency overhead costs. The unpredictable nature of the revenue makes it difficult to conduct activities that are important but not directly related to application review, such as enforcement and the review and development of general and service-specific standards for evaluating applications.*